

## Fugh, Justina

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**From:** Fugh, Justina  
**Sent:** Thursday, May 04, 2017 5:11 PM  
**To:** Steve Corbally (scorball@oge.gov)  
**Subject:** I sent this one (and the next email) directly to Seth

Hi Steve,

Seth Jaffe called me last week about EPA's rationale for not asking certain individuals to sign the ethics pledge (apparently, OGE received a congressional inquiry to double check on me). These people are not career employees but they are also not appointed through the White House. They are appointed to confidential, policy making positions under the Safe Drinking Water Act, and I've never asked them to sign the pledge. Anyway, Seth asked me whether I had consulted with OGE eight years ago about that, and I said ... sure, I must have. Then the very smart Jennie Keith told me that yes, I had indeed asked OGE because she was our desk officer at the time, and that Don Fox had told me that these people did not have to sign the pledge! I found my outgoing message to Jennie at OGE to prove I had asked.

Anyway, having talked to Seth recently about that, I sent him this question below directly to him. I should have cc'd you. Sorry!

Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

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**From:** Fugh, Justina  
**Sent:** Thursday, May 04, 2017 4:58 PM  
**To:** 'sjaffe@oge.gov' <sjaffe@oge.gov>  
**Subject:** question for you

Hi Seth,

I am writing for your advice. (b) (5)

(b) (5)

Justina

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## Fugh, Justina

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**From:** Seth Jaffe <sjaaffe@oge.gov>  
**Sent:** Friday, April 28, 2017 10:33 AM  
**To:** Fugh, Justina  
**Subject:** RE: well, I found my outgoing question ...

Justina,

Thank you for the information. I appreciate it.

Seth

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**From:** Fugh, Justina [mailto:Fugh.Justina@epa.gov]  
**Sent:** Friday, April 28, 2017 9:40 AM  
**To:** Seth Jaffe  
**Subject:** well, I found my outgoing question ...

Hi Seth,

I went into my archives in Lotus Notes (which was the email system we used *years* ago) and found this outgoing email to the OGE Desk Officer, who at that time was Jennie Keith. What I can't find is any written answer back from OGE, but that's not terribly unusual. Back then, we would often get a response by phone instead. But at least I can prove that I asked the question back in 2009!

Justina

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{In Archive} okay, I need some help in clarifying a term

Justina Fugh to: vjkeith

Cc: fort.daniel, love.peggy

02/12/2009 11:23 AM

Archive:

This message is being viewed in an archive.

Does EPA's "administratively determined" positions fall under the definition of "appointee" for the purposes of the Executive Order? To write something about yesterday's fabulous DAEOgram, I went back to re-read the 1/22/09 DAEOgram and now have a question. That document says that the pledge applies to all "full-time political appointees" but then says "whether they are appointed by ... an agency head." So now I'm wondering about my AD appointments. They are appointed pursuant to specific authority in the Safe Drinking Water Act at 42 USC 300j-10:

[the EPA administrator] may appoint personnel to fill not more than thirty scientific, engineering, professional, legal and administrative positions within the Environmental Protection Agency without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate [of GS-15].

At EPA, we do not treat the ADs as "political" since they survive the end of each administration and are reappointed (or not) by the new administrator. But they are definitely appointed by the "agency head," so do you think that they are "political appointees" for the purposes of signing the ethics pledge? I would say not, but want to double check with you.

Thanks,  
Justina